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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 BEVERLY J. WATKINS,

8 Plaintiff,

9 v.

10 UNIVERSITY MEDICAL CENTER,

11 Defendant.

Case No. 2:16-cv-01105-APG-PAL

**ORDER
And
REPORT OF FINDINGS AND
RECOMMENDATION**

(Mot Enforce Setlmt – ECF No. 39)

12 Before the court is defendant's Motion to Enforce Settlement (ECF No. 39). The court has
13 considered the motion and plaintiff's Opposition (ECF No. 41).

14 **BACKGROUND**

15 This is an employment discrimination and civil rights case. On July 18, 2017, the parties
16 submitted a stipulation and proposed order to stay the case pending approval of a settlement
17 agreement the parties reached. *See* Stipulation (ECF No. 36). The stipulation advised that their
18 agreement was contingent upon approval by defendant University Medical Center of Southern
19 Nevada's governing board. The board was not scheduled to meet until August 23, 2017, and the
20 parties therefore requested a short stay which the court granted.

21 On September 28, 2017, the parties submitted a Stipulation (ECF No. 37) requesting a
22 status conference. In it, the parties represented that UMC's governing board had approved the
23 settlement. However, since July 19, 2017, there has been a breakdown in communication between
24 plaintiff and her attorneys as plaintiff had not returned dozens of phone calls, or responded to
25 emails, and letters. The court granted the parties request for a status conference and set the matter
26 for hearing on October 19, 2017. At the hearing, counsel for the parties appeared and represented
27 that a written settlement agreement had been agreed to by both sides, and approved by UMC's
28 governing board. However, plaintiff was still refusing to communicate with her counsel and was

1 refusing to sign the agreement. At the hearing plaintiff's counsel acknowledged that the agreement
2 prepared by counsel for UMC accurately reflected the parties' settlement. Counsel for plaintiff
3 also represented that she had full authority from her client to enter into the agreement under the
4 terms contained in the written agreement. Defense counsel stated UMC was still willing to abide
5 by the agreement provided his client was protected from claims arising out of this lawsuit. Both
6 sides "requested the court's guidance." The court directed counsel for defendant to file a motion
7 attaching a copy of the written settlement agreement, and required plaintiff's counsel to file a
8 response attesting to whether or not the settlement agreement attached to the motion was the
9 agreement reached.

10 Defendants filed a motion to enforce which attaches a copy of the settlement agreement
11 and an email from counsel for plaintiff to counsel for defendant confirming that the "settlement
12 agreement draft you sent is fine." UMC requests an order: (1) enforcing the terms of the agreement
13 in the form attached as Exhibit C to the motion; (2) reducing agreed upon settlement amount by
14 \$450.00 as a sanction to cover UMC's costs and fees for filing the motion necessitated by
15 plaintiff's refusal to execute the agreement; (3) directing that all payments required under the terms
16 of the agreement be made payable to plaintiff and her attorney's trust fund; and (4) an order
17 dismissing this action with prejudice. Counsel for plaintiff opposes UMC's request to reduce the
18 \$5,000 settlement payment by \$450.00, but does not object to defendants' other three requests for
19 relief. The opposition confirms that the settlement agreement attached to the motion to enforce is
20 the agreement the parties reached.

21 DISCUSSION

22 A district court has the inherent power to enforce a settlement agreement entered into while
23 litigation is pending before it. *In re City of Equities Anaheim, Ltd.*, 22 F.3d 954, 957 (9th Cir.
24 1995); *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987). The court's equitable power to
25 summarily enforce a settlement agreement derives from the nature of the relief sought. *Cf. Adams*
26 *v. Johns-Manville Corp.*, 876 F.2d 702, 709 (9th Cir. 1989) (noting that an "action for specific
27 performance without a claim for damages is purely equitable"). A motion to enforce a settlement
28 agreement is essentially an action to specifically enforce a contract. *Id.* (quoting *Owens-Illinois*,

1 *Inc. v. Lake Shore Land Co.*, 610 F.2d 1185, 1189 (3d Cir. 1979)). However, a district court may
2 not exercise its equitable powers to summarily enforce a settlement “where material facts are in
3 dispute.” *In re City Equities Anaheim*, 22 F.3d at 958.

4 Federal courts apply state law contract principles in deciding a motion to enforce. *Wilcox*
5 *v. Arpaio*, 753 F.3d 872, 876 (9th Cir. 2014). The Nevada Supreme Court has held that because a
6 settlement agreement is a contract, its construction and enforcement is governed by principles of
7 contract law. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). For a contract
8 to be enforceable, basic contract principles require: and offer and acceptance, meeting of the
9 minds, and consideration. *Id.* Preliminary negotiations do not constitute a binding contract unless
10 the parties have agreed to all material terms. *Id.* A contract is not enforceable when material terms
11 are lacking or are insufficiently certain and definite. *Id.* However, a contract may be formed when
12 the parties have agreed to the material terms, even though the contract’s exact language is not
13 finalized until later. *Id.* A court may not compel compliance of a settlement agreement “when
14 material terms remain uncertain. The court must be able to ascertain what is required of the
15 respective parties.” *Id.* The terms of a release are material to any settlement agreement. *Id.* at
16 673–74, 119 P.3d at 1258. The Nevada Supreme Court has found that “release terms are not a
17 mere formality,” but “an important reason why a party enters into a settlement agreement.” *Id.*

18 Here, there are no material facts in dispute. Counsel for the parties agree that a settlement
19 was reached between the plaintiff Beverly Watkins, University Medical Center of Southern
20 Nevada, and Clark County in the form attached to the motion as Exhibit “C”. UMC’s governing
21 board approved the settlement. The court has reviewed the settlement agreement. It contains
22 standard terms and conditions for agreements of this nature. The terms are sufficiently certain and
23 definite and outlines what is required of both sides. Counsel or plaintiff confirms that the plaintiff
24 agreed to and authorized this settlement, but has refused to communicate with counsel for months,
25 and declined to sign the agreement. The court will therefore grant the motion to enforce, direct
26 that settlement proceeds be paid as requested, and recommend that this case be dismissed with
27 prejudice. However, the court will deny the request for sanctions.

28 Having reviewed and considered the matter,

IT IS ORDERED that UMC's Motion to Enforce Settlement (ECF No. 39) is **GRANTED** in part and **DENIED** in part.

1. The motion is granted to the extent that:


A. The terms of the settlement agreement in the form attached as Exhibit C shall be enforced; and

B. The payments required under the terms of the agreement shall be made payable to the plaintiff and her attorney's trust fund and tendered forthwith;

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2. The motion is denied to the extent that UMC is requesting to reduce the agreed-upon settlement amount by \$450.00 as a sanction for plaintiff's refusal to execute the agreement and cover the costs of UMC's motion practice.

IT IS RECOMMENDED that this case be dismissed with prejudice with each side responsible for its own costs and attorney's fees.

DATED this 17th day of November, 2017.


PEGGY A. TEEN
UNITED STATES MAGISTRATE JUDGE